IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7860 OF 2004

Shivshankar R.Bharati .. Petitioner.
Vs.
Shamsunder K.Gosavi & Ors. .. Respondents.

Mr.Uday Warunjikar for the petitioner.

CORAM : D.B.BHOSALE, J.

DATED : 28TH SEPTEMBER, 2004

P.C.:

. Heard Mr.Warunjikar, learned counsel for the petitioner.

2. By the impugned order dated 6.8.2004 the application of the petitioner seeking to intervene in the execution proceedings bearing No.33/2000 has been rejected. The petitioner claim that he being a legal heir of his deceased father - Raghunath he is necessary party in the execution proceedings. It appears that deceased - Raghunath had executed a Will in favour of his wife i.e. mother of the petitioner and by virtue of which she was brought on record in the execution proceedings after Raghunath's death. The petitioner has filed Regular Civil Suit No.2/2002 seeking declaration

that the Will allegedly executed by Raghunath in favour of his wife is sham and bogus and that he is legally entitled for possession of the suit property involved in the execution proceedings. The said property is presently in possession of the tenant. In any case unless the petitioner succeeds in R.C.C.Suit No.2/2002 he cannot claim possession of the said property. I find no merit in the contention that the petitioner is necessary party in the execution proceedings. It is always open for the petitioner to claim appropriate reliefs in his suit bearing No.R.C.S.No.2/2002 as and when his mother is put in possession of the said property in the execution proceedings. Moreover, it may be noticed that the petitioner had failed in his efforts to get his suit and the instant execution proceedings clubbed together. In the circumstances no interference is called for in the impugned order. All contentions are left open. The petition is, accordingly, disposed of.

(D.B.Bhosale, J.)